

**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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DESIREE D. KOGER-GUSTAFSON,  
*Complainant,*

v.

EAST ALLEN COUNTY SCHOOLS,  
*Respondent.*

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Formal Complaint No.  
21-FC-59

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Luke H. Britt  
Public Access Counselor

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This advisory opinion is in response to a formal complaint alleging East Allen County Schools, through its Board of Trustees, violated the Open Door Law.<sup>1</sup> Attorney Mark D. Scudder filed an answer on behalf of the school district. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on May 17, 2021.

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<sup>1</sup> Ind. Code § 5-14-1.5-1-8.

## **BACKGROUND**

In this case we consider whether the board of East Allen County Schools (EACS) violated the Open Door Law (ODL) by limiting the public's ability to participate in two recent public meetings.

On May 17, 2021, Desiree D. Koger-Gustafson (Complainant) filed a formal complaint with this office alleging the EACS Board denied the public access to the meetings held on April 20 and on May 4, 2021. Specifically, Koger-Gustafson asserts that the school board denied requests to hold the meetings at a bigger venue to accommodate a larger crowd and by requiring attendees to wear masks in the meeting room. Although the school board broadcast the meetings via Zoom and provided an overflow space outside the meeting room where the public could observe the proceedings on a monitor, Koger-Gustafson contends that she and others were unable to hear the proceedings.

On June 7, 2021, East Allen County Schools filed a response to the complaint denying any violation of the Open Door Law. Specifically, EACS argues that the school board permitted all interested members of the public to observe and speak at both meetings in question. Additionally, EACS contends that the board has no obligation to move public meetings to a different location, especially when doing so may degrade the experience of individuals attending the meeting via Zoom.

## ANALYSIS

### 1. The Open Door Law

The Open Door Law (ODL) requires public agencies to conduct and take official action openly, unless otherwise expressly provided by statute, so the people may be fully informed. Ind. Code § 5-14-1.5-1. As a result, the ODL requires all meetings of the governing bodies of public agencies to be open at all times to allow members of the public to observe and record the proceedings. *See* Ind. Code § 5-14-1.5-3(a).

East Allen County Schools (EACS) is a public agency for purposes of the ODL; and thus, is subject to the law's requirements. Ind. Code § 5-14-1.5-2. The EACS Board of Trustees (Board) is a governing body for purposes of the ODL. *See* Ind. Code § 5-14-1.5-2(b). As a result, unless an exception applies, all meetings of the Board must be open at all times to allow members of the public to observe and record.

### 2. The ODL does not require relocation of a meeting

At the heart of this case is a dispute about whether the EACS Board violated the Open Door Law by not relocating two public meetings to a larger meeting space to better accommodate a larger in-person crowd and provide more space for the attendees, particularly those who would not or could not wear a mask, to distance themselves from others.

Indeed, the ODL requires the meetings of the governing bodies of public agencies to be open so the public can observe and record the proceedings. Ind. Code § 5-14-1.5-3. This

statutory right, of course, is not absolute because of considerations like room capacity. Only so many people can occupy a particular space. This was true even before the capacity restrictions and social distancing measures related to the pandemic.

At the same time, this office has consistently advised public agencies that the spirit of the law supports the idea of moving a public meeting to roomier location when the governing body is on notice of increased public interest in a particular meeting, and it is reasonable and feasible to relocate the meeting.

Even so, the Open Door Law does not expressly require a governing body to relocate a meeting.

What is more, legislation passed during the 2021 session of the Indiana General Assembly grants governing bodies the ability to hold meetings virtually during a public health emergency, which was still in effect at the time of the meetings. *See* Ind. Code § 5-14-1.5-3.7. This would contemplate a hybrid approach of in-person and virtual attendees.

Toward that end, EACS broadcast the meeting via Zoom and provided an overflow room with a monitor for those attendees who were not in the meeting room to observe the meeting. Technical issues notwithstanding, this is an appropriate approach to public meetings with a public health emergency in place. Notably, EACS's approach of combining in-person meetings, real-time live streaming, and providing an overflow space with a monitor for public meetings is the exception not the rule.

As aside, this office acknowledges that EACS's mask requirement at the meetings in question is an underlying issue in this case. Still, this office declines the invitation to meander into that politically charged landscape beyond its intersection with the public access laws of this state.

The Open Door Law requires open meetings so the public can observe and record the proceedings. Generally, a mask worn over the nose and mouth will not impede a person's ability to observe and record and is not a barrier to access. Conversely, if the board required attendees to wear blindfolds and noise-canceling headphones or prohibited recording devices at public meetings, our conclusion would change.

At the time of these meetings, the board's mask requirement for attendees did not violate the ODL. This is especially true considering the board's real-time live streaming of the meetings and the availability of overflow space.

## **CONCLUSION**

Based on the foregoing, it is the opinion of this office that East Allen County Schools did not violate the Open Door Law.

A handwritten signature in black ink, appearing to read 'LHB', is positioned to the right of the conclusion text.

Luke H. Britt  
Public Access Counselor